

In re) Fair Hearing No. 20,062
)
Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Child Development Division, citing her for three violations of its Early Childhood Program (ECP) regulations stemming from a visit to the petitioner's day care facility on October 27, 2005.

1. The petitioner is the director of a licensed ECP day care facility in White River Junction, Vermont. In October 2005 the Department received a complaint from a former employee¹ alleging various problems with the facility. On October 27, 2005 a Department licensor and her supervisor visited the petitioner's facility.

¹ Both parties characterized the former employee as "disgruntled".

with the petitioner on that day they also concluded that a staffing violation had occurred on one occasion several weeks beforehand.

3. As a result of these findings the licensors sent the petitioner a "Licensing Site Visit Field Form", dated November 17, 2005, which the petitioner was required to post for 30 days in her facility. The Department concedes that the petitioner was cooperative throughout the inspection and that she fully and timely complied with all the "corrective actions" the Department required her to take.

4. At no time did the Department take, or threaten to take, any adverse action against the petitioner's license due to these alleged violations. However, the Department did record them and place them in the facility's file. Because she disagrees with the seriousness of some of the licensor's conclusions, the petitioner filed an appeal to the Board to have these alleged violations stricken from the facility's record. Following months of review and negotiation, at the hearing in this matter, held on June 13, 2006, the petitioner contested only three of the Department's findings.

5. However, in the hearing the petitioner did not contest the *factual* bases of any of the Department's findings. The petitioner admits that on October 27, 2005

there was a hole under the fence in the play yard of a size that was potentially hazardous to children and which appeared to have been there for several days. It appears that the petitioner had been unaware of the hole, and there is no dispute that she had it fixed as soon as it was brought to her attention.

6. The petitioner also did not dispute that on the day of the licensors' visit there was an old bookshelf standing in the entry room where the children put their boots on. The petitioner admits that the shelf was "floppy" and that items including paint cans and shears that were being stored on or near the upper shelves could have fallen. There is no dispute that the petitioner promptly and safely secured the shelf and removed the hazardous items.

7. The petitioner also admits that in the summer of 2005, prior to the time that she became the director of the facility, a staff member's child and another child at the facility were allowed to play outside by themselves unsupervised, although apparently with the consent of both children's parents. There is no dispute that there is no evidence that the petitioner ever allowed this after she became the director.

ORDER

The Department's decision that the findings in question constitute violations of its regulations is affirmed.

REASONS

Section VA23 of the Department's ECP regulations includes the provision:

There shall be a safe outdoor play area that provides a minimum of 75 square feet per child. This play area shall be fenced or otherwise protected from traffic and other hazards and includes a provision for shade. The play area shall be inspected regularly for removal of dangerous and hazardous materials.

In this case, it cannot be concluded that the Department's interpretation of the above provision to prohibit hazardous holes under a fence in an outdoor play area is unfair or unreasonable. Inasmuch as there is no dispute that such a hole existed for at least several days, the Department's decision that the facility was in violation of the above provision must be affirmed.

Section VA8 of the ECP regulations provides:

Furniture, equipment, and climbing structures shall be clean, sturdy, without sharp edges, and present minimal hazards. Bookcases and other shelving units shall not present a tipping or falling hazard.

Again, inasmuch as there is no dispute that on the day of the Department's visit the shelf in question was loose and

had items stored on it that could have fallen off on children, the Department's decision that the petitioner's facility was in violation of the above provision must be affirmed.

Section ID2 of the same regulations provides:

Outdoor play areas shall be under the supervision of staff interacting with the children.

Inasmuch as the petitioner admits that certain children were allowed to play outdoors unsupervised, the Department's decision regarding the above provision must also be affirmed.

In this case there does not appear to be any dispute as to the overall quality of the petitioner's facility or the petitioner's own competence and conscientiousness as its director. However, neither is there any claim or indication that the Department has in any way abused its discretion. By law the Board is bound to affirm the Department if its decisions "are determined to be in compliance with applicable law, even though the Board may disagree with the results effected by those decisions". 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

#